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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,654	10/31/2003	.Robert F. Walko JR.	P/10-653	3767
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OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403				
			EXAMINER HARTMAN JR, RONALD D	
			ART UNIT 2121	PAPER NUMBER

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/698,654

Applicant(s)

WALKO, ROBERT F.

Examiner

Ronald D. Hartman Jr.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

1. Claims 1-20 are presented for examination.

Priority

2. There does not appear to be any claim of priority with regards to the instant application, and therefore the effective filing date appears to be 10/31/2003.

Information Disclosure Statement

3. There were no IDS's filed with regards to the instant application.

Oath/Declaration

4. The Oath / Declaration filed on 3/1/2004 does not appear to suffer from any particular deficiency.

Drawings

5. There do not appear to be any deficiencies with respect to the drawings filed on 10/31/2003.

Specification

6. The specification is objected to because of the following deficiencies:

(1) [0023] describes Figure 1 element 21 as a time frame beginning on Monday at midnight and ending on Friday at 11:59 P.M., but Figure 1 shows the time frame actually beginning on Sunday at midnight, not Monday at midnight. Further, this section also refers to element 22 as a time frame beginning Saturday at midnight and ending Sunday at 11:59 P.M., but Figure 1 shows the time frame actually beginning Friday at midnight, not Saturday at midnight.

(2) [0027] describes the weekend time frame as element 26, but there is no element 26 for the time frames in the Figures.

(3) [0027] describes Friday as element 17 and also describes Saturday as element 17. It is readily apparent that Friday should be listed as element 16.

The examiner has provided a number of examples of the specification deficiencies in the list above; however, the list of deficiencies may not be all-inclusive. Applicant should refer to these as examples of deficiencies and should make all the necessary corrections to eliminate any and all other deficiencies from the specification.

Claim Objections

7. As per claims 1 and 15, “to prevent interference between results” and “from interfering with each other” has not been adequately discussed with reference to the specification; particularly with reference to use of the terms “interference” and “interfering”. As best understood, it appears that the applicant’s intention was to include a feature wherein the first and second timeframes were defined in a manner that assures that the control events do not “conflict” with one another.

Claim 5 is objected to because the Examiner is unsure as to what the scope of the claim actually is, since if:

A = a timeframe, B= first time and C =second time, this claim may be interpreted to mean either:

- (1) A and (B or C); or
- (2) (A and B) or C.

For purposes of examination, the Examiner will interpret this claim to mean (2).

As per claim 10, the specification does not described what is meant by “an output”. For examination purposes, the examiner will interpret this to be functionally equivalent to any output signal.

As per claim 17, the phrase "when included" causes the Examiner great confusion since the Examiner is unsure as to whether this feature is present or not. Therefore, it will be assumed, for the purposes of examination, that the first and second event are included since the claims provides no basis for how the system would operate if these features were not present.

As per claim 17, lines 10-11, is the intention of the applicant to claim, "are not A or not B", or "are not A or are B"? Both change the scope of the claim dramatically. Therefore, for purposes of examination, it will be assumed that the applicants intention was, "are not A or are B", wherein A = midnight and B = within one minute of midnight.

As per claim 17, line 5, it appears the word "of" should appear in between "capable" and "including".

The examiner has provided a number of examples of claim deficiencies in the list above; however, the list of deficiencies may not be all-inclusive. Applicant should refer to these as examples of deficiencies and should make all the necessary corrections to eliminate any and all other deficiencies with respect to the claims.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-14 and 17-20 are rejected under 35 U.S.C. 112, 2nd paragraph as being either incomplete or inaccurate. That is, as per claims 1, 11 and 17, either the body of the claims are incomplete since they do not support the preamble OR the preamble is inaccurate since a control system is claimed and the body of the claims is merely claiming at best, data per se. Therefore, it appears that with respect to claims 1, 11 and

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17, the body of the claims and the preamble of the claims are in conflict with one another.

Claims 6, 8, 13 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "about" in claims 6, 8, 13 and 14 and the term "around" in claim 19 are relative terms, which render the claim indefinite. The term "about" or "around" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Therefore, for art rejection purposes, the Examiner will assume that "about" and "around" means "within one minute". See MPEP 2173.05 (b).

Claim Rejections - 35 USC § 101

9. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-20 are directed to non-statutory subject matter.

Independent claims 1, 11, 15 and 17 all claim subject matter that is non-statutory since non functional descriptive material is being claimed, which appear to be at best, data per se. That is, the data claimed as being representative of timeframes does not impart functionality and the claims lack any hardware, with respect to claims 1, 11 and 17, to establish a statutory category of invention as a machine or manufacture, nor is claim 15 believed to claim a process which is useful.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11. Claims 1-2, 4-15 and 17-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Figure 1 of the applicants disclosure, with reference to the pending application, that being U.S. Application No. 2005/0094493 A1, as the Applicant has readily admitted that this Figure, that is Figure 1, is representative of Prior Art.

As per claim 1, Figure 1 teaches a time or calendar control system including time or date activated control events, the control system comprising:

- a plurality of timeframes (e.g. Figure 1 elements 21 and 22) for obtaining separated control events (e.g. Figure 1 elements 31, 32, 33, 34 and 35);
 - a first timeframe (e.g. Figure 1 element 21) having a control event at a first time within the first timeframe (e.g. Figure 1 element 31 occurring at "T1");
 - a second timeframe (e.g. Figure 1 element 22) having a control event at a second time within the second timeframe (e.g. Figure 1 element 34 occurring at "T4");
- and
- the first and second timeframes being defined to prevent interference between results of the control events at the first and second times (e.g. Figure 1 shows the control events, at the first and second times, graphically occurring during first and second timeframes, respectively, and therefore the control events do not conflict with one another).

As per claim 2, Figure 1, and its corresponding textual descriptions, adequately discloses a feature wherein the either the first or second time is variable since the schedule is determined by and programmed for the user (e.g. [0025] as it pertains to the description of Figure 1).

As per claim 4, Figure 1, and its corresponding textual descriptions, adequately discloses a feature wherein a control event is repeated (e.g. [0024] as it pertains to the description of Figure 1).

As per claim 5, Figure 1, and its corresponding textual descriptions, adequately discloses a feature wherein an input is utilized to adjust a second time (e.g. [0025] as it pertains to the description of Figure 1 and inputting data using a GUI).

As per claim 6, Figure 1 teaches one of the timeframes to be equal to or greater than within one minute of 24 hours (e.g. Figure 12, element 21 which lasts 5 days which equals 120 hours).

As per claim 7, Figure 1 discloses one of the timeframes to consist of more than one control event (e.g. Figure 1, element 21 having elements 31, 32 and 35).

As per claim 8, Figure 1 discloses one of the timeframes beginning between within one minute of midnight (e.g. Figure 1, elements "midnight" and "11:59 P.M.).

As per claims 9 and 18, Figure 1 discloses the first and second timeframes representing weekdays and weekends (e.g. Figure 1, element 21 representing the weekdays, and element 22 representing the weekends).

As per claim 10, Figure 1 and its corresponding textual description teaches an output activated based on a control event (e.g. signals intended for turning the lights on and off; inherent to [0024]).

As per claim 11, Figure 1 discloses a time or calendar control system, including time or date activated control events, comprising:

- a plurality of timeframes (e.g. Figure 1 elements 21 and 22) for obtaining separated control events (e.g. Figure 1 elements 31, 32, 33, 34 and 35);

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- a first timeframe (e.g. Figure 1 element 21) having a control event at a first time within the first timeframe (e.g. Figure 1 element 31 occurring at "T1");
- a second timeframe being defined to avoid overlap with the first timeframe (e.g. Figure 1 shows no graphical overlap defined between the first timeframe and the second timeframe; See legend);
- an operation of the first control event being completed before an end of the first timeframe (e.g. In light of [0024] which discloses the control events of Figure 1 being instantaneous activities such as turning a light on and off, it appears that Figure 1 adequately contemplates this feature since if a light is turned on OR off at T1 of Monday, it clearly would have been turned on OR off before the end of that day (Monday at midnight)); and
- the first timeframe having a beginning point after midnight (e.g. Figure 1 shows the starting point of time frame 1, element 21, beginning after midnight, since if the beginning point is Monday at 11:59 P.M., then the beginning point occurred 11 hours and 59 minutes *after* midnight).

As per claim 12, Figure 1 shows the first timeframe being a weekday timeframe and the second timeframe being a weekend timeframe (e.g. Figure 1, element 21 representing the weekdays, and element 22 representing the weekends).

As per claim 13, Figure 1 shows the beginning point being in the range of within one minute of midnight to within one minute of noon on a specified day (e.g. Figure 1, Monday 11:59 P.M.).

As per claim 14, Figure 12 shows an ending time for the first time frame to be in the range of from within one minute of midnight on a Friday to within one minute of noon on a Friday (e.g. Figure 1, Friday midnight).

As per claim 15, the rejection of claim 1, from above, is applied equally herein.

As per claim 17, the rejections of claims 1 and 4, from above, are applied equally herein. Further, Figure 1 teaches control events repeating in the first time and control events repeating in the second timeframe as well as the first, second, third and forth specified times as being within one minute of midnight (e.g. Figure 1, elements 31 occurring repeatedly over Monday – Friday of timeframe 21, elements 34 occurring repeatedly over Saturday – Sunday and the beginning and ending times of the first and second timeframes being within one minute of midnight, that is, 11:59 P.M. for the start times of both the first and second timeframes and midnight for the end times of the first and second timeframes).

As per claim 19, the rejection of claim 2, from above, is applied equally herein. It is further noted that since the specified times may be changed in accordance with desires of the user, as already addressed with regards to claim 2 above, a feature wherein the times chosen are within one minute of noon Sunday or within one minute of noon Friday are both inherent to the capabilities of choosing times in accordance with the needs of the user and merely represent a design choice that does not change or affect the overall operations of the system, but rather, provides for specific times that are well within the disclosed capabilities of Figure 1 and its corresponding textual descriptions for the reasons already mentioned above.

As per claim 20, the rejection of claims 2 and 19, from above, is applied equally herein. Further, since Figure 1 shows first, second third and forth specified times (e.g. T1, T2, T3, T4 and T5), the same rational as applied to claim 2, with reference to the first and second times, is applied herein with reference to the third and forth times.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 3 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Figure 1, as applied to claims 1 and 15 above, and further in view of Rye et al., U.S. Patent No. 6,229,433.

As per claim 3, Figure 1 does not teach or disclose by way its textual descriptions that the timeframes are variable, that is, that the timeframes may be adjusted. That is, Figure 1 does not teach a time frame being adjusted from 5 or 2 days to another duration since there are only two time frames presented, that being a weekday timeframe and a weekend timeframe.

Since Figure 1 does not specifically teach variable timeframes, then it stands to reason that, as per claim 16, Figure 1 also does not teach the first timeframe beginning Sunday afternoon and the second timeframe beginning Friday afternoon.

Rye et al. teaches a home automation system wherein the user of the system is able to schedule when appliances will turn on and off, such as lighting, wherein a display screen shows the weekly schedule for the devices and wherein the user is able to choose when the controlled devices will turn on and off; in addition Rye et al. also teaches that the schedule for operations may have time frames set to weekends, weekdays, specific days, specific times of specific days, at dawn or dusk of specific days or other schedules, based on the needs or desired of the user (e.g. Figure 7 and C10 L20-41).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the teachings of Rye et al. into the system disclosed by Figure 1 since both systems are directed towards analogous art in that they both teach home automation scheduling systems, and for the purpose of allowing a more flexible approach to home automation by allowing the home owner to schedule the operations of the home appliances in relation to his specific needs, thereby providing a more flexible and reliable home automation system, and this would have been obvious to one of ordinary skill in the art at the time the invention was made.

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Conclusion

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronald D. Hartman Jr. whose telephone number is (571) 272-3684. The examiner can normally be reached on Mon.-Fri., 11:00 - 8:30 pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Knight can be reached on (571) 272-3687. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ronald D Hartman Jr.

Patent Examiner

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Ronald D Hartman Jr.
2/6/2006

RDH